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38 CFR Ch. I (7-1-00 Edition)

the Veterans Services Officer. If the veteran is not hospitalized by the Department of Veterans Affairs there may be paid out of any remaining amounts so much of the pension, compensation or emergency officers' retirement pay as equals the amount charged the veteran for his or her current care and maintenance in the institution in which the treatment or care is furnished, but not more than the amount determined to be the proper charge.

(Authority: 38 U.S.C. 5503)

(e)(1) When the discontinuance of payments under this section results or would result in financial hardship for the veteran, discontinuance may be waived to avoid or reduce such hardship. Waiver of discontinuance under this paragraph may be granted more than once in any calendar year but may not exceed a total of 60 days in any calendar year.

(2) The veteran, or any person or organization acting on the veteran's behalf, is authorized to request such waiver.

(3) For purposes of this paragraph, financial hardship shall be held to exist for any month in which a veteran's liabilities during that month exceed the sum of the veteran's income and liquid assets during that month.

(4) Waivers under this paragraph are not to be granted as an administrative expediency or where liquid assets are readily available to meet current expenses.

(Authority: 38 U.S.C. 5503)

[26 FR 1598, Feb. 24, 1961, as amended at 27 FR 7678, Aug. 3, 1962; 36 FR 25225, Dec. 30, 1971; 40 FR 45170, Oct. 1, 1975; 45 FR 64910, Oct. 1, 1980; 50 FR 50616, Dec. 11, 1985; 53 FR 23237, June 21, 1988]

CROSS REFERENCES: Veterans disability pension. See § 3.454(c). Reductions and discontinuances; general. See § 3.500. Reductions and discontinuances; veterans. See § 3.501. Amounts withheld or not paid incompetent veteran. See § 3.1007. Estate \$1,500. See § 13.108 of this chapter. Determination of value of estate. See § 13.109 of this chapter.

§ 3.558 Resumption and payment of withheld benefits; incompetents \$1,500 estate cases.

(a) Where payment has been discontinued by reason of § 3.557(b), it will not

be resumed during hospitalization except as provided in § 3.557(e) or paragraph (b) of this section until proper notice has been received showing the estate is reduced to \$500 or less. Payments will not be made for any period prior to the date of which the estate was reduced to \$500 or less.

(Authority: 38 U.S.C. 5503)

(b) Payments for the veteran will be resumed and apportionment awards discontinued under the applicable provisions of § 3.556(a), (d), and (e) upon authorized absence from the hospital for 30 days or more or a regular or irregular discharge or release. Care and maintenance payments to an institution will not be made for any period the veteran is not receiving such care and maintenance.

(c) Any amount not paid because of the provisions of § 3.557(b), and any amount of compensation or retirement pay withheld pursuant to the provisions of § 3.551(b) (and/or predecessor regulatory provisions) as it was constituted prior to August 1, 1972, and not previously paid because of the provisions of § 3.557(b), will be awarded to the veteran if he or she is subsequently rated competent by VA for a period of not less than six months.

(Authority: 38 U.S.C. 5503)

[27 FR 7679, Aug. 3, 1962, as amended at 36 FR 25225, Dec. 30, 1971; 38 FR 34116, Dec. 11, 1973; 40 FR 45170, Oct. 1, 1975; 41 FR 18412, May 4, 1976; 50 FR 50617, Dec. 11, 1985; 58 FR 34224, June 24, 1993]

§ 3.559 Resumption—\$1,500 cases where estate includes chose in action.

(a) Where payments have been discontinued because of hospitalization and there exists only a claim against a defunct bank, or other institution, or the entire estate is the subject of litigation, or consists of investments of undetermined value, and there is no income to provide for clothing and other needs, and comforts for the veteran, the Veterans Services Officer may consider the guardian's statement setting forth the facts and estimating what the said claim or chose in action would sell for in the open market. If the Veterans Services Officer is satisfied that the value of the estate does not exceed

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\$500, he or she will prepare a certificate to that effect. Upon receipt of this certification by the adjudication division, payments will if otherwise in order be authorized effective the first day of the month in which award action is taken.

(b) When the claim is settled or litigation terminated the Veterans Services Officer will again review the case and, if the estate is then \$1,500 or more, will forward an appropriate certification to the adjudication division.

(c) Special cases which do not come within this section or where money is urgently needed should be reported to the Office of the Under Secretary for Benefits.

[26 FR 1598, Feb. 24, 1961, as amended at 40 FR 14570, Oct. 1, 1975; 50 FR 50617, Dec. 11, 1985; 61 FR 20727, May 8, 1996]

ADJUSTMENTS AND RESUMPTIONS

§ 3.650 Rate for additional dependent.

(a) *Running awards.* Except as provided in paragraph (c) of this section where a claim is filed by an additional dependent who has apparent entitlement which, if established, would require reduction of pension, compensation or dependency and indemnity compensation being paid to another dependent, payments to the person or persons on the rolls will be reduced as follows:

(1) Where benefits would be payable from a date prior to the date of filing claim, the reduction will be effective from the date of potential entitlement of the additional dependent.

(2) Where benefits would be payable from the date of filing claim, the reduction will be effective the date of receipt of the claim by the additional dependent, or date of last payment, whichever is later.

If entitlement of the additional dependent is not established, benefits previously being paid will be resumed, if otherwise in order, commencing the day following the effective date of reduction.

(b) *New awards.* If the additional dependent is found to be entitled, the full rate payable will be authorized effective the date of entitlement.

(c) *Retroactive DIC award to a school child—*(1) *General.* If DIC (dependency and indemnity compensation) is being

currently paid to a veteran's child or children under 38 U.S.C. 1313(a), and DIC is retroactively awarded to an additional child of the veteran based on school attendance, the full rate payable to the additional child shall be awarded the first of the month following the month in which the award to the additional child is approved. The rate payable under the current award shall be reduced effective the date the full rate is awarded to the additional child. The rate payable to the additional child for periods prior to the date the full rate is awarded shall be the difference between the rate payable for all the children and the rate that was payable before the additional child established entitlement.

(2) *Applicability.* The provisions of paragraph (c)(1) of this section are applicable only when the following conditions are met:

(i) The additional child was receiving DIC under 38 U.S.C. 1313(a) prior to attaining age 18; and

(ii) DIC for the additional child was discontinued on or after attainment of age 18; and

(iii) After DIC has been discontinued, the additional child reestablishes entitlement to DIC under 38 U.S.C. 1313(a) based on attendance at an approved school and the effective date of entitlement is prior to the date the Department of Veterans Affairs receives the additional child's claim to reestablish entitlement.

(Authority: 38 U.S.C. 1313(b))

(3) *Effective date.* This paragraph is applicable to DIC paid after September 30, 1981. If DIC is retroactively awarded for a period prior to October 1, 1981, payment for the period prior to October 1, 1981 shall be made under paragraph (a) of this section and payment for the period after September 30, 1981, shall be made under this paragraph.

[29 FR 9564, July 15, 1964, as amended at 47 FR 24551, June 7, 1982]

§ 3.651 Change in status of dependents.

Except as otherwise provided:

(a) A payee who becomes entitled to pension, compensation, or dependency and indemnity compensation or to a greater rate because payment of that